UN

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.128
18 November 1992

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 128th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 November 1992, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Germany

---

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.128/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-14490 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Germany (CAT/C/12/Add.1)

1. At the invitation of the Chairman, Mr. Mayer-Ladewig, Mr. Daum, Mr. Siegismund, Mrs. Chwolik-Lanfermann and Mr. Schemel (Germany) took places at the Committee table.

2. Mr. MAYER-LADEWIG (Germany), introducing his country's initial report (CAT/C/12/Add.1), said that the Federal Republic of Germany was aware of its special responsibilities with regard to the Convention. The prohibition against torture and other cruel, inhuman or degrading treatment or punishment was a feature of the German Constitution and other legislation. A well-developed system of legal protection also helped to ensure that the practical implementation of legislation was subject to permanent and stringent control. In its Constitution, the Basic Law, the Federal Republic of Germany declared its commitment to uphold human rights, guaranteed the inviolability of human dignity and also obliged "all State authority" to respect and protect it. In accordance with the rulings of the Federal Constitutional Court, the principle that human dignity should be respected also meant that cruel, inhuman and degrading punishments were prohibited. Moreover, for persons in official custody, protection was clarified and expressed in concrete terms in the second sentence of article 104 (1) of the Basic Law, which prescribed that detained persons could not be subjected to mental or to physical ill-treatment.

3. The effective implementation of the Convention required a system of controls, which was guaranteed in Germany under constitutional law. Article 19 (4) of the Basic Law contained a guarantee of recourse to the courts which was available to anyone whose rights had been violated by a public authority. The German Penal Code did not contain a general offence of "torture". However, there were specific offences which would be penalized in the manner provided for by the Convention. For example, the offences of assault and battery in office (sect. 340 of the Penal Code) and the extraction of testimony by duress (sect. 343 of the Penal Code) were punishable under criminal law. Section 136 (a) of the Code of Criminal Procedure was particularly important because it prohibited, inter alia, any impairment, by the use of ill-treatment, of freedom of decision and the voluntary manifestation of will and could be invoked to prohibit the use of a testimony obtained under duress.

4. The legal provisions on remand custody helped to promote and thereby achieve the aims of the Convention. Under those provisions, arrest warrants had to meet certain requirements, confinement could be reviewed at any time and it was more difficult for remand custody to be extended beyond six months.

5. When individuals were held in custody on the order of the State, it was particularly important that the provisions of the Convention should be implemented. Such custody could involve prison, psychiatric institutions or

police custody for individuals under provisional arrest. Domestic legislation ensured that a regular and systematic review of the confinement and commitment of detainees was carried out by members of the administration, committees or specially appointed parliamentary bodies.

6. He pointed out that legal remedies in Germany were not restricted to the domestic level. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was directly applicable in Germany and citizens could file applications with the European Commission of Human Rights. Germany had also recognized the jurisdiction of the European Court of Human Rights in accordance with article 46 of the European Convention.

7. The German Federal Government was able to state that, in practice, there had been very few incidents where the conduct of public officials had violated the Convention, as shown by national statistics and by those of the European Court of Human Rights. Offences of assault and battery in office for the most part involved teachers who had been convicted for applying corporal punishment. Other convictions related to isolated incidents in cases where blood samples had been taken from drivers of motor vehicles. According to the statistics of the European Court of Human Rights, there had been no instance where Germany had been deemed to have violated the prohibition against torture contained in article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. One case was, however, pending.

8. The most effective way to ensure that torture was not practised was to provide State employees and public officials with adequate training and to familiarize them with the provisions of the Convention against Torture. Germany's rules on training guaranteed that provision was made for the relevant instruction. Trainee police officers were, for example, taught how to deal with conflict situations and how best to avoid them. An important role in training individuals to treat people fairly was also played by advanced training courses, to which particular importance was attached in the new Länder, where, prior to reunification, conditions of detention might not always have been in conformity with the law.

9. With regard to the unfortunate events which had recently taken place in Germany, namely, the violence directed against foreigners, the German Federal Government was taking great pains, in cooperation with the Länder and democratic forces, to put an end to such acts. The police had sometimes been criticized for not intervening early enough to protect the victims of such violence. Such criticism was being carefully reviewed. However, it did not suggest that the incidents had been instigated by the police or carried out with the latter's express or tacit agreement.

10. As to article 3 of the Convention, section 51 (1) of the Aliens Act in Germany prohibited deportation in cases of political persecution, namely, where the life or liberty of an alien had been threatened as a result of his race, religion, nationality, his membership of a specific social group or his political convictions. Section 53 (1) also provided that no alien could be deported to a country in which he faced a threat of torture.

11. In Germany, prisoners in remand custody or sentenced in connection with terrorist offences were treated in exactly the same way as other prisoners. Where security measures requiring certain restrictions had to be taken in individual cases, the yardstick used in ordering such measures was very strict. Thereafter, careful reviews were carried out to determine whether the measures had to be maintained.

12. The CHAIRMAN, speaking as Country Rapporteur, said that he found the report of Germany detailed and specific. However, it referred both to "Germany" and to "the Federal Republic of Germany", which he assumed were one and the same. He noted from the report that German legislation did not contain any specific provisions on torture. He therefore wondered if there might not be some gaps, since physical torture was covered by provisions of the Penal Code, whereas mental torture was covered only when threats were involved. He emphasized that torture also included acts such as giving a detainee false information in order to induce him to make a confession by wearing down his resistance. He asked whether such acts were punishable in Germany.

13. Referring to paragraph 60 of the report, which stated that "preliminary detention can be ordered in accordance with section 112 of the Code of Criminal Procedure if there is a danger that the accused will flee", he noted that article 6 of the Convention related to arrest, regardless of where the crime had been committed. The report did not deal with that aspect or state whether German legislation made a distinction between the geographical scope of article 5 and that of article 6 of the Convention.

14. He requested clarification on whether German legislation fully implemented all of the provisions of article 7 of the Convention. As to article 8, paragraph 68 of the report stated that "the Federal Republic of Germany is among those States which do not make extradition conditional on the existence of a treaty". Did that imply that article 8 was being fully implemented because of the rule that the international conventions to which Germany was a party were applied directly, even if they had not been expressly incorporated in domestic legislation?

15. In relation to article 9 of the Convention, paragraph 69 of the report stated that "The Federal Republic meets the obligation arising from this provision of the Convention to afford other States parties the 'greatest measure of assistance' in conformity with existing treaties on mutual judicial assistance". He nevertheless thought that article 9 of the Convention went further and required that judicial assistance should be granted to all other States parties to the Convention, regardless of whether a treaty on mutual judicial assistance existed. Was that requirement also being met in accordance with the principle that the provisions of a convention to which Germany was a party were applied directly? The report seemed to imply that the systematic monitoring of police and of the instructions, methods and practices of interrogation, as referred to in article 11 of the Convention, was not necessary, since violations of article 11 were rare. However, the implementation of article 11 was intended as a preventive measure. No State

could rule out the possibility that violations of human rights might occur. He requested the German delegation to provide further information in that regard.

16. The English text of paragraph 89 of the report relating to article 15 of the Convention stated that, "If the accused asserts convincingly that his confession was extorted by the police or the prosecution through torture or other prohibited methods of interrogation, the judge must, ex officio, investigate the matter". The French text, which used the words "Si l'accusé prouve", should therefore be brought into line with the English because it was not up to the accused to prove that he had been a victim of torture.

17. Mr. MIKHAILOV (Alternate Country Rapporteur) commended the German report, which was both detailed and objective. He praised Germany's democratic traditions and said that his own country had learned a great deal from its legislation and jurisprudence. Since the German Constitution embodied the principle that human dignity had to be respected, he wished to know whether that was the basis on which it could be assumed that torture and other cruel, inhuman and degrading treatment or punishment were prohibited. If such an assumption was deemed to be adequate, why was torture expressly referred to in article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights and, of course, the Convention against Torture?

18. He also wished to know why the Penal Code did not contain specific provisions for combating torture. He noted that, in paragraph 24 of the report, it was stated that "Article 3 of the European Convention on Human Rights is deemed a directly enforceable provision in German domestic law and has the same force as federal law enacted by the German legislative" and asked whether the provisions of the Convention against Torture were likewise directly applicable. Were there any obstacles to that application?

19. According to paragraph 32 of the report, a public official who caused bodily harm during the exercise of or in connection with his duties was to be punished by imprisonment from three months to five years, and for not less than two years if serious bodily harm had been caused. Was there a maximum sentence for such serious cases and were all forms of torture and other cruel, inhuman or degrading treatment or punishment covered by that provision?

20. With regard to paragraph 53 of the report, where reference was made to "the typical conception of 'torture'", he asked whether the German delegation had in mind conception set forth in the Convention or the conception as understood in German domestic law?

21. Concerning paragraph 75 of the report, was German legislation directly applicable in the five new Länder or did special provisions apply?

22. He also asked whether the compensation referred to in paragraph 87, only concerned torture or also included other forms of ill-treatment.

23. Mr. BURNS joined his colleagues in commending the German delegation on its comprehensive report and detailed statement.

24. He asked whether the current State assumed jurisdiction for acts of cruel or unusual punishment committed by officials of the former State, for example, with regard to prisoners and detainees.

25. He sought clarification on the concept of "remand custody", to which reference had been made by the German representative in his statement. In his own country, Canada, that term generally meant that a court had intervened and ruled that a prisoner could be held for a certain period on remand before being brought forward for trial. Was there a limit to the length of time that a person could be held? Was there a difference between the powers of arrest and custody for State security matters and for civil police matters? He also wished to know whether there were any circumstances that allowed the police to hold a person incommunicado and for how long.

26. Mr. DIPANDA MOUELLE said that he would like to have some general information on the workings of the German judiciary. How many courts were there, how were magistrates appointed and what was the relationship of the courts to the other two branches of power?

27. Turning to paragraph 53 of the report, he asked what other persons in office, apart from teachers, had been convicted by German courts for assault and battery.

28. Referring to paragraph 87, he asked which court had jurisdiction to hear requests for compensation and whether such a case could be brought before criminal, civil and administrative courts at the same time. Concerning a comment made in the statement by the German representative, he asked for further clarification about cases of abuse in connection with blood samples being taken from drivers of motor vehicles.

29. Mr. SORENSEN said that he had been the head of the delegation of the European Committee for the Prevention of Torture which had visited Germany in 1991 and which had enjoyed Germany's complete cooperation. That delegation had just submitted its report, which was still confidential, and he would therefore not take part in the current discussion. He did, however, wish to point out that, although he was pleased that medical personnel in Germany received education in ethics, the Convention required medical personnel to be educated about torture and the treatment of torture victims. The same applied to the police. In view of the enormous refugee problem Germany faced, the border police must be taught to recognize torture victims. Usually, such victims were ashamed and reluctant to reveal that they had been abused.

30. Mr. BEN AMMAR asked whether the German Constitution in force in the Federal Republic before reunification was currently applicable throughout the reunified Germany and whether any amendments had been made to it. The statistics provided related to the Federal Republic before reunification and he asked whether there were any statistics on the former German Democratic Republic.

31. Like Mr. Burns, he wished to know whether abuses under the old system of the German Democratic Republic were being prosecuted or whether an amnesty had been declared and he also inquired whether compensation was being paid to the victims of the former regime.

32. According to section 136 (a) of the Code of Criminal Procedure (para. 33 of the report), force could be applied only so far as was permitted by the law of criminal procedure. He asked for examples of cases in which force could be used.

33. Concerning paragraph 66, he wondered whether the principle of discretionary prosecution was not in conflict with certain obligations under the Convention.

34. Referring to police investigation and interrogation and prison conditions, he asked whether there was a code of ethics for the police and prison staff.

35. In his view, a vast education campaign was needed in the former German Democratic Republic, not only for the police and prison authorities, but at all levels of the German school system. That would help reduce the number of unfortunate incidents to which the German representative had alluded.

36. Mr. EL IBRASHI thanked the German delegation for its comprehensive report and its clear statement.

37. Like Mr. Burns and Mr. Ben Ammar, he wished to have more details about how the Convention was applied in the new Länder. Had changes been introduced into Land law? What was the legal situation with regard to crimes committed under the former regime before the new laws had been introduced?

38. Referring to paragraphs 26 and 27 of the report, he said that he was not clear whether the Convention took precedence over the German Constitution. If a court found that there was a contradiction between a provision of domestic law and the Convention, which would prevail?

39. According to paragraph 14 of the report, persons who could not pay the costs of legal proceedings received legal aid if the prosecution had sufficient prospects of success. Who decided whether such prospects existed and on what basis and what did the term "prospects" mean?

40. Concerning the reference to the use of force in paragraph 33, which Mr. Ben Ammar had already mentioned, he asked when force could be used, what kind of force was allowed and whether it was limited to self-defence.

41. With regard to education, he wondered whether any effort was being made in faculties of law to instil awareness of the question of torture.

42. Like Mr. Burns, he wished to know whether there was a limit on the length of time a person could be kept in custody by the police and what the authority was to which a detainee could appeal. How long could a judge keep a person in custody?

43. He would welcome clarification on the first two sentences of paragraph 43. He did not understand what the problem was in refusing to extradite.

44. In paragraph 89, he did not see why it was necessary to say that the use of a statement which had been obtained in violation of the prohibition on extorting a confession through torture rendered the conviction subject to appeal; after all, everything was subject to appeal, so that was not sufficient.

The public meeting rose at 11.20 a.m.